COA Opinion: Duty to mitigate does not require bank to foreclose before pursuing claims against guarantor

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In *Fifth Third Bank v. Canvasser*, the Court of Appeals affirmed summary disposition in favor of the bank against a guarantor even though the bank did not foreclose on the underlying collateral before suing the guarantor. Defendant Mark Canvasser guaranteed a several commercial loans for his real-estate development company. The company defaulted. Fifth Third sued Canvasser on his guaranties without first foreclosing on the underlying properties. On appeal, Canvasser argued that by electing to pursue him under the guarantees without first foreclosing, Fifth Third failed to mitigate its damages. The Court of Appeals rejected this argument, reasoning that “an absolute guaranty of payment does not require the creditor to exhaust its remedies against the borrower, including foreclosure on its collateral, before suing any guarantors.” Moreover, the court concluded that electing one remedy as opposed to others is not a *per se* failure to mitigate.

Disclaimer: Warner Norcross & Judd LLP represented the successful appellee, Fifth Third Bank, in this case.